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Attorneys for Defendants
CITY OF HUNTINGTON BEACH, BRANDON D.
ROCKETT AND DANIEL M. SUBIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPHAN SHAY, an individual
NATHAN SHAY, an individual,

Plaintiffs,

vs.

CITY OF HUNTINGTON BEACH, a
public entity, OFFICER BRANDON D.
ROCKETT #422090, as an individual
and a peace officer, OFFICER DANIEL
M. SUBIA #421221, as an individual
and a peace officer and DOES 1 through
10, inclusive,

Defendants.

Case No. 8:17-CV-744 AG (JCGx)

**DEFENDANTS' AMENDED
MOTION IN LIMINE NO. 2 TO
EXCLUDE EVIDENCE OF
OUTCOME OF PLAINTIFFS'
CRIMINAL PROCEEDINGS,
OTHER THAN FACT OF
CONVICTION OF STEPHAN SHAY**

DATE: October 22, 2018

TIME: 8:30 a.m.

CTRM: 10D

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1 TO THE CLERK OF THE COURT, AND ALL PARTIES BY AND
2 THROUGH THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on October 22, 2018 at 8:30 a.m., or as soon
4 thereafter as counsel may be heard in Courtroom 10D of the above-entitled Court,
5 located at 41 West Fourth Street, Santa Ana, California, Defendants CITY OF
6 HUNTINGTON BEACH, BRANDON D. ROCKETT, and DANIEL M. SUBIA
7 (collectively "Defendants"), hereby move the Court *in limine* for an Order excluding
8 from trial any argument regarding, reference to, or introduction of, any testimony,
9 documents, or other evidence regarding the outcome of Plaintiffs' criminal
10 proceedings arising from the subject incident, other than the fact of Stephan Shay's
11 conviction.

12 This Motion is based upon this Notice, the Memorandum of Points and
13 Authorities attached hereto, the Declaration of Daniel S. Cha (hereinafter "Cha
14 Decl.") with Exhibits, upon all documents on file in this case, and upon such oral
15 and documentary evidence that may be received and considered by this Court when
16 ruling on this Motion.

17 This Motion is brought following the conference of counsel pursuant to Local
18 Rule 7-3, which began on August 22, 2018, and which included follow-up email
19 communications between the parties' counsel.

20
21 DATED: October 8, 2018

MICHAEL E. GATES, City Attorney

22
23 By: /s/
24 Daniel S. Cha, Sr. Deputy City Attorney,
25 Attorney for Defendants,
26 CITY OF HUNTINGTON BEACH,
27 BRANDON D. ROCKETT and DANIEL M.
28 SUBIA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

This action arises out of a January 13, 2016 traffic stop of Plaintiff Nathan Shay (hereinafter “Nathan”) by Defendant Huntington Beach Police Officers Brandon Rockett and Daniel Subia. During the course of an investigation into a potential DUI violation, Nathan’s brother Plaintiff Stephan Shay (hereinafter “Stephan”) ran up to the scene. Eventually, Stephan and Nathan were arrested. Plaintiffs claimed Rockett and Subia used excessive force and that they were subject to unlawful search-and-seizure, among other related claims.

On September 25, 2018, this Court granted in part Defendants’ Motion for Summary Judgment. This Court’s order recognized qualified immunity for the Defendants on Plaintiffs’ excessive force claims, First Amendment claims, and equal protection claims – thus, trial will proceed solely on Plaintiffs’ search-and-seizure related claims.

In a nutshell, the fact of Stephan’s conviction for violation of Penal Code § 415(2) is relevant for all the reasons set forth in Defendants’ pending summary judgment papers. However, the subsequent dismissals of Plaintiffs’ criminal proceedings arising out of the incident are irrelevant and subject to exclusion under Federal Rule of Evidence 403.

II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY.

For the sake of brevity, Defendants will not reiterate all facts involved in this action, but Defendants refer the Court to Section II of Defendants’ Motion *in Limine* No. 1 for a fuller statement of the facts and disputes at issue.

As a result of the incident, the Orange County District Attorney’s Office charged Stephan with a violation of Penal Code § 148(a)(1) – resisting, delaying, or obstructing a peace officer. On October 12, 2016, Stephan reached an agreement with the Orange County District Attorney’s Office for a deferred entry of judgment:

- 1 • Stephan agreed to plead guilty to an added count for violation of Penal Code
- 2 § 415(2) and, within 90 days of the entry of the plea, to complete an
- 3 educational program, pay the costs and fees of the program, commit no new
- 4 law violations, provide a DNA sample, waiver of his right to withdraw
- 5 consent related to his DNA sample.
- 6 • The District Attorney's Office, in return, agreed to immediately dismiss the
- 7 count for violation of Penal Code § 148(a)(1), and to move to allow Plaintiff,
- 8 upon the successful completion of his obligations, to withdraw the guilty plea
- 9 and for dismissal of the count for violation of Penal Code § 415(2).

10 On that same date, Stephan appeared before the criminal court and pleaded

11 guilty to the count for violation of Penal Code § 415(2). The criminal court found a

12 factual basis for, and accepted, the plea of guilty. Pursuant to the deferred entry of

13 judgment agreement, imposition of sentence was postponed until January 10, 2017.

14 On January 10, 2017, pursuant to the terms of the deferred entry of judgment

15 agreement, Stephan's motion to withdraw his guilty plea was granted, and the count

16 for violation of Penal Code § 415(2) was dismissed¹.

17 Nathan was issued a citation and notice to appear when he was released on

18 the date of the incident, with regard to the speeding violation the officers had

19 initially observed. On May 26, 2016, Nathan's counsel filed a demurrer/request for

20 verified complaint on the ground that the citation and notice to appear was issued on

21 a judicial council form that was two months out-of-date as of the date of the

22 incident. Cha Decl. at ¶ 2-3, Exhibit "A" [Nathan's Demurrer in Speeding Case],

23 Exhibit "B" [Docket re: OCSC Case No. HB3116914]. The state court sustained the

24 demurrer with leave to amend. Exhibit "B". No amended or verified complaint was

25 filed, and the matter was dismissed on June 6, 2016. Exhibit "B".

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¹ Documents reflecting the foregoing were submitted on summary judgment, and Plaintiffs did not dispute any of these facts.

1 **III. THE COURT HAS THE POWER TO GRANT THIS MOTION IN**
 2 **LIMINE BASED UPON ITS INHERENT POWER TO MANAGE THE**
 3 **COURSE OF TRIALS.**

4 Motions *in limine* are recognized as a proper pretrial request, both in practice
 5 and in case law. *Ohler v. United States*, 529 U.S. 753, 758 (2000); *United States v.*
 6 *Cook*, 608 F.2d 1175, 1186 (9th Cir. 1979). Authority for these motions is also
 7 derived from the Court’s inherent power to manage the course of trials. *Luce v.*
 8 *United States*, 469 U.S. 38, 41 (1984). Indeed, this very Court has recognized the
 9 propriety of motions *in limine* to “resolve highly sensitive issues before the ‘bell is
 10 rung’ in front of a jury....” *Mixed Chicks LLC v. Sally Beauty Supply LLC*, 879
 11 F.Supp.2d 1093, 1094 (C.D. Cal. 2012).

12 **IV. DEFENDANTS ARE NOT LIABLE FOR DAMAGES THAT**
 13 **ACCRUED TO PLAINTIFFS AS A RESULT OF CRIMINAL**
 14 **PROCEEDINGS, BECAUSE PLAINTIFFS HAVE NOT ALLEGED**
 15 **MALICIOUS PROSECUTION.**

16 In *Wallace v. Kato*, 549 U.S. 384 (2007), the Supreme Court set forth the
 17 distinction between damages for false arrest and damages for malicious prosecution:

18 If there is a false arrest claim, damages for that claim cover the time
 19 of detention up until issuance of process or arraignment, but not more.
 20 From that point on, any damages recoverable must be based on a
 21 malicious prosecution claim and on the wrongful use of judicial
 22 process rather than detention itself.

Id. at 389-90 (internal quotations omitted).

23 Therefore, damages related to Plaintiffs’ arrests is cut off after their respective
 24 releases from custody, and do not include damages caused by the subsequent
 25 initiation and filing of their criminal proceedings. Furthermore, with regard to
 26 Stephan, whose criminal case was initiated by a criminal complaint filed by the
 27 District Attorney’s office, there is a further break in the chain of causation. *Smiddy*
 28 *v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981) (“Filing of a criminal complaint
 immunizes investigating officers... from damages suffered thereafter because it is

1 presumed that the prosecutor filing the complaint exercised independent judgment in
 2 determining that probable cause for an accused's arrest exists at that time."').

3 Neither Plaintiff has ever alleged a malicious prosecution claim.
 4 Accordingly, Plaintiffs' damages cannot include any component of damages
 5 stemming from their respective criminal prosecutions.

6 **V. THE SUBSEQUENT DISMISSALS OF PLAINTIFFS' CRIMINAL**
 7 **PROCEEDINGS, OTHER THAN THE FACT OF STEPHAN'S**
 8 **CONVICTION, ARE IRRELEVANT.**

9 As noted above, pursuant to this Court's order granting in part Defendants'
 10 Motion for Summary Judgment, the only claims that remain to be tried are search-
 11 and-seizure claims arising under the Fourth Amendment. In order for proffered
 12 evidence to be relevant, it must have some "tendency to make the existence of any
 13 fact that is of consequence to the determination of the action more probable or less
 14 probable than it would be without the evidence." Fed.R.Evid. 401. Whether a
 15 Fourth Amendment violation occurred "turns on an objective assessment of the
 16 officer's actions in light of the facts and circumstances *confronting him at the*
 17 *time....*" *Scott v. United States*, 436 U.S. 128, 138 (1978) (emphasis added);
 18 *Graham v. Connor*, 490 U.S. 386, 396 (1989).

19 Whether [an] arrest was constitutionally valid depends in turn upon
 20 whether, *at the moment the arrest was made*, the officers had
 21 probable cause to make it – whether *at that moment* the facts and
 22 circumstances within their knowledge and of which they had
 23 reasonably trustworthy information were sufficient to warrant a
 24 prudent man in believing that the petitioner had committed or was
 25 committing an offense.

26 *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (emphasis added).

27 Accordingly, the Ninth Circuit has repeatedly held that the subsequent
 28 dismissals of criminal proceedings do not have a tendency to make the existence of

1 probable cause at the time of arrest more or less likely. *De Anda v. City of Long*
 2 *Beach*, 7 F.3d 1418, 1422-23 (9th Cir. 1993); *Heath v. Cast*, 813 F.2d 254, 260 (9th
 3 Cir. 1987). Accordingly, on the basis of relevancy alone, the ultimate dismissals of
 4 Plaintiffs' subsequent criminal proceedings should be excluded from evidence.

5 **VI. THE SUBSEQUENT DISMISSALS ARE SUBJECT TO EXCLUSION**
 6 **UNDER FEDERAL RULE OF EVIDENCE 403.**

7 Evidence of the subsequent dismissals of Plaintiffs' criminal proceedings lack
 8 any substantial probative value, for the reasons set forth above. In addition to this
 9 fundamental lack of relevance, such evidence is subject to exclusion also because
 10 this non-existent probative value is necessarily "substantially outweighed by a
 11 danger of one or more of the following: unfair prejudice, confusing the issues,
 12 misleading the jury, undue delay, [or] wasting time...." Fed.R.Evid. 403. "Unfair
 13 prejudice' within [the rule's] context means an undue tendency to suggest decision
 14 on an improper basis." *Cohn v. Papke*, 655 F.2d 191, 194 (9th Cir. 1981).

15 With regard to Stephan's dismissal pursuant to his deferred entry of judgment
 16 agreement with prosecutors, allowing such evidence in will confuse and mislead the
 17 jury into considering the propriety and appropriateness of Stephan's treatment by
 18 the District Attorney's office. It would also cause undue delay and waste time as the
 19 parties would expend unnecessary time eliciting evidence providing context for the
 20 circumstances, meaning, and motivations for the deferred entry of judgment
 21 agreement and dismissal.

22 With regard to Nathan's dismissal, the potential morass is even deeper. As
 23 set forth above, Nathan's criminal proceeding was dismissed because a judicial
 24 council form was out of date by two months. This will confuse and mislead the jury
 25 into considering the impropriety of the use of an outdated form, rather than focusing
 26 on whether the facts and circumstances at the scene justified Defendants' actions
 27 under the Fourth Amendment. Moreover, time will be wasted and undue delay will
 28

1 be caused by presenting evidence regarding fine points of criminal/traffic
2 enforcement procedure, judicial council forms, etc.

3 Again, in light of the lack of probative value of such evidence, it is subject to
4 exclusion under Federal Rule of Evidence 403. *Heath*, 813 F.2d at 260 (affirming
5 exclusion of evidence of dismissal of criminal charges under Federal Rule of
6 Evidence 403).

7 **V. CONCLUSION.**

8 Based on the foregoing reasons, Defendants respectfully request that this
9 Court grant Defendants' Motion *in Limine* No. 2 in its entirety.

10
11 DATED: October 8, 2018

MICHAEL E. GATES, City Attorney

12
13 By: /s/

14 Daniel S. Cha, Sr. Deputy City Attorney,
15 Attorney for Defendants,
16 CITY OF HUNTINGTON BEACH,
17 BRANDON D. ROCKETT and DANIEL M.
18 SUBIA
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DECLARATION OF DANIEL S. CHA

I, Daniel S. Cha, hereby declare the following:

1. I am an attorney at the Office of the City Attorney for the City of Huntington Beach, attorneys for Defendants CITY OF HUNTINGTON BEACH, BRANDON D. ROCKETT and DANIEL M. SUBIA. The following is within my own personal knowledge, and if called upon to testify I could and would competently testify thereto.

2. Attached hereto and incorporated herein by reference as Exhibit "A" is a true and correct copy of the Demurrer filed on behalf of Plaintiff Nathan Shay in OCSC Case No. HB3116914.

3. Attached hereto and incorporated herein by reference as Exhibit "B" is a true and correct copy of the online docket available from the Orange County Superior Court website for OCSC Case No. HB3116914.

I declare under penalty of perjury of the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 8th day of October, 2018, at Huntington Beach, California.

/s/

Daniel S. Cha

R. Allen Baylis Bar No. 194496
 9042 Garfield Ave., Suite 202
 Huntington Beach, CA92646
 Voice: (714) 962-0915
 Fax: (714) 962-0930

Attorney for Defendant

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 WEST JUSTICE CENTER

MAY 26 2016

ALAN CARLSON, Clerk of the Court

BY: L. MORFIN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA) No. HB3116914
PLAINTIFF) DEMURRER TO COMPLAINT AND REQUEST FOR VERIFIED COMPLAINT
v.) Penal Code §§ 1002; 1004(2); 1006, Vehicle Code § 40513(b), CRC 4.103(a)
NATHAN ALLEN SHAY) Date: 5/26/16
DEFENDANT) Time: 8:30
) Dept.: W7

TO THE ABOVE ENTITLED COURT and DISTRICT ATTORNEY:

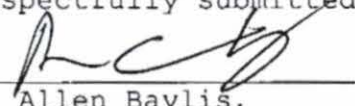
PLEASE TAKE NOTICE that pursuant to, California Penal Code § 1006, Defendant hereby requests that hearing on this demurrer take place immediately, or as soon as the Court's and Counsel's schedule's allow. Pursuant to Penal Code §1004 the Defendant hereby demurrers to Citation number HB3116914 , (copy attached) filed as an accusatory pleading in this court on the grounds that the facts stated do not constitute a public offense within the meaning of California Penal Code §1004(2), to wit:

1 The citation is not on a form approved by the Judicial Council
2 as required by Vehicle Code § 40513(b). Said Notice to Appear
3 fails to meet the requirements set out in the Judicial Council's
4 instructions *Notice to Appear and Related Forms* (form TR-INST)
5 as mandated pursuant to California Rules of Court, Rule
6 4.103(a). Additionally, Due to the forgoing, said Notice to
7 Appear does not constitute a verified complaint. Defendant
8 intends to plead not-guilty, and therefore is entitled to
9 request a verified complaint pursuant to Vehicle Code § 40513(a)

10
11 This Demurrer is based upon the citation, the
12 accompanying memorandum of points and authorities, the Court
13 documents and records in this case and the evidence and argument
14 to be presented at hearing.

15
16 Dated: May 26, 2016

Respectfully submitted


R. Allen Baylis,
Attorney for Defendant

1 Vehicle Code § 40513(a), to which the defendant may enter a plea
2 of "guilty" or "nolo contendere." If the Notice to Appear is on
3 a form approved by the Judicial Council, it constitutes a
4 complaint to which the defendant may enter a plea of not guilty.

5 Vehicle Code §40500(b) states "The Judicial Council shall
6 prescribe the form of the notice to appear."
7
8

9 It should be further noted that The California Judicial
10 Council form TR-INST NOTICE TO APPEAR AND RELATED FORMS revised
11 June 26, 2015 section 3.010 specifically states "**Law enforcement**
12 **must use the revised Notice to Appear form by the effective date**
13 **of the revised form adopted by the Judicial Council.**" Pursuant
14 to subsection (b), "The Judicial Council adopted forms... TR-130,
15 effective June 26, 2015, with implementation as soon as
16 reasonably possible, but **no later than November 15, 2015.**"
17 (Excerpt of TR-INST attached hereto, entire document available
18 at: www.courts.ca.gov/documents/trinst.pdf) Therefore, the
19 Notice to Appear filed in this case with a violation date of
20 Jan. 13, 2016, and a revision date of January 2, 2004 is
21 not on a form approved by the judicial.
22

23 The TR-INST is published by the Judicial Council on its
24 website, and is easily accessible for use by law enforcement,
25 the courts, and the general public. In fact, compliance with the
26 instructions set out in TR-INST is mandatory.
27

28 California Rules of Court, Rule 4.103(a) states as follows:

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Rule 4.103. Notice to appear forms

(a) Traffic offenses

A printed or electronic notice to appear that is issued for any violation of the Vehicle Code other than a felony or for a violation of an ordinance of a city or county relating to traffic offenses must be prepared and filed with the court on Automated Traffic Enforcement System Notice to Appear (form TR-115), Traffic/Nontraffic Notice to Appear (form TR-130), Electronic Traffic/Nontraffic Notice to Appear (4-inch format) (form TR-135), or Electronic Traffic/Nontraffic Notice to Appear (3-inch format) (form TR-145), and must comply with the requirements in the current version of the Judicial Council's instructions, Notice to Appear and Related Forms (form TR-INST).

California Rules of Court, Rule 4.2. states as follows:

The Criminal Rules apply to all criminal cases in the superior courts unless otherwise provided by a statute or rule in the California Rules of Court.

Therefore, this court has neither reason nor legal authority to deviate from the Judicial Council's requirements. Should a peace officer, as in this case, fail to comply with the statutory requirements, the trial court must honor a defendant's request that a proper verified complaint be filed prior to entering a plea. The legislative purposes of Vehicle Code § 40513(a) are frustrated if they are not followed by the courts.

III

IF THE CITATION IS NOT ON A FORM APPROVED BY THE JUDICIAL COUNCIL, A VERIFIED COMPLAINT MUST BE FILED

Vehicle Code § 40513 reads in pertinent part:

1 (a) Whenever written notice to appear has been
 2 prepared, delivered, and filed with the court, an
 3 exact and legible duplicate copy of the notice
 4 when filed with the magistrate, in lieu of a
verified complaint, shall constitute a complaint
 5 to which the defendant may plead "guilty" or "nolo
contendere."

6 If, however, the defendant violates his or her
 7 promise to appear in court or does not deposit
 8 lawful bail, or pleads other than "guilty" or
 9 "nolo contendere" to the offense charged, a
 10 complaint shall be filed that shall conform to
 11 Chapter 2 (commencing with Section 948) of Title 5
 12 of Part 2 of the Penal Code, which shall be deemed
 13 to be an original complaint, and thereafter
 14 proceedings shall be had as provided by law,
 15 except that a defendant may, by an agreement in
 16 writing, subscribed by him or her and filed with
 17 the court, waive the filing of a verified
 18 complaint and elect that the prosecution may
 19 proceed upon a written notice to appear.

20 (b) Notwithstanding subdivision (a), whenever the
 21 written notice to appear has been prepared on a
 22 form approved by the Judicial Council, an exact
 23 and legible duplicate copy of the notice when
 24 filed with the magistrate shall constitute a
 25 complaint to which the defendant may enter a plea
 26 and, if the notice to appear is verified, upon
 27 which a warrant may be issued. If the notice to
 28 appear is not verified, the defendant may, at the
 time of arraignment, request that a verified
 complaint be filed....

22 The defendant may not enter a plea of not guilty to an a
 23 charge filed on a Notice to Appear that is not approved by the
 24 Judicial Council, pursuant to §40513(a). The defendant may, and
 25 here by does, request that a verified complaint be filed in this
 26 case.

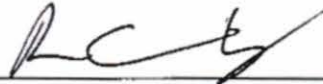
27 CONCLUSION/ARGUMENT

1 This demurrer must be sustained. The citation which
2 constitutes the accusatory pleading/complaint herein is fatally
3 defective in that the required subscription "under penalty of
4 perjury" is undated. The fact that the notice to appear filed in
5 this case fails to comply with the lawful requirements as cited
6 above is irrefutable and indisputable. The date is required,
7 and is simply not present.

8
9 In any event, should the Court decline to sustain the
10 demurrer, the Defendant must be allowed to, and hereby does
11 request that a properly verified complaint be filed prior to
12 entering a plea of not guilty pursuant to Penal Code § 40513(b).

13
14 Date: May 26, 2016

Respectfully submitted,

15 
16 By: R. Allen Baylis
17 Attorney for Defendant
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CITY OF HUNTINGTON BEACH

COURT COPY

NOTICE TO APPEAR

☐ MISDEMEANOR ☒ TRAFFIC ☐ NON-TRAFFIC

DATE OF VIOLATION	TIME	<input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M.	DAY OF WEEK	REPORT NUMBER
01/13/16	1:55		S M T W T F S	16-569
NAME (FIRST, MIDDLE, LAST)				<input type="checkbox"/> Owner's Responsibility (Veh. Code 40001)
NATHAN ALLEN SHAY				

ADDRESS
2000 PCH APT 105CITY
HUNTINGTON BEACH STATE
CA ZIP CODE
92648DRIVERS LICENSE NO.
S-000622051767 MI C STATE
CA CLASS
C COMMERCIAL
☐ YES ☒ NO D.O.B.
10/13/1980 AGE
17SEX
M ☐ F ☒ HAIR
BRN EYES
BRN HEIGHT
602 WEIGHT
190VEHICLE LIC. NO. / VIN NO.
7FHA647 STATE
CA RACE
W Commercial Vehicle
☐ (Veh. Code, 15210(B))
Hazardous Material
☐ (Veh. Code, 353)YR. of VEH.
2015 MAKE
HONDA MODEL
CIVIC BODY STYLE
4DR COLOR
BLK PASSENGERS
M F NONEREGISTERED OWNER or LESSEE
PACIFIC CAR FIN CORP ☐ SAME AS DRIVERADDRESS
177 S. AIRPORT BLVD ☐ SAME AS DRIVERCITY
HUNTINGTON BEACH STATE
CA ZIP CODE
92648ELIGIBLE FOR DISMISSAL (Veh. Code 40610) ☐ BOOKING REQUIRED ☐ ADV. 24004 HOME/SHOP

YES NO Code and Section Description Misdemeanor or Infraction (Circle)

☒ 22350 VC - SPEEDING M ☒ I☐ M I☐ M I☐ M IEVIDENCE OF FINANCIAL RESPONSIBILITY ☒ Valid ☐ None ☐ No ProofSPEED APPROX. P.F. MAX SPEED SAFE SPEED ☐ RADAR USED ☐ ACCIDENT N

LOCATION OF VIOLATION(S) AT PCH / CENTER SIGNAL W E

WEATHER CLR FG RN ☒ DRY ☐ DAMP WET ☒ MED ☐ HVY LIGHT DAWN DAY DUSK NIGHT S LANE☐ VIOLATION(S) NOT COMMITTED IN MY PRESENCE, DECLARED ON INFORMATION AND BELIEF.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date 1/13/16 ARRESTING / ISSUING OFFICER PACIFIC / SCOTIA SERIAL # 2000 / 1221 UNIT # 65X

NAME OF ARRESTING OFFICER, IF DIFFERENT THAN ABOVE. SERIAL # UNIT #

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND LOCATION CHECKED BELOW.

☒ SIGNATURE ☒ BEFORE A JUDGE OR CLERK OF THE WEST JUSTICE CENTER, 8141 13TH ST., WESTMINSTER, CA 92683☐ JUVENILE COURT WITH PARENT AND DRIVERS LICENSE 341 THE CITY DRIVE, ORANGE, CALIFORNIA 92613-1569☐ JUVENILES TO BE NOTIFIED PARENTS INFO. SEE REVERSE SIDE

DATE 2/25 2016 AT 8:00 A.M.

☐☐

HB3116914

EXHIBIT A

HB 3116914

Rule 4.102 amended effective January 1, 2016; adopted as rule 850 effective January 1, 1965; previously renumbered as rule 4.102 and amended effective January 1, 2001; previously amended effective January 1, 1970, January 1, 1971, July 1, 1972, January 1, 1973, January 1, 1974, July 1, 1975, July 1, 1979, July 1, 1980, July 1, 1981, January 1, 1983, July 1, 1984, July 1, 1986, January 1, 1989, January 1, 1990, January 1, 1993, January 1, 1995, January 1, 1997, July 1, 2004, January 1, 2007, and July 1, 2013.

Rule 4.103. Notice to appear forms

(a) Traffic offenses

A printed or electronic notice to appear that is issued for any violation of the Vehicle Code other than a felony or for a violation of an ordinance of a city or county relating to traffic offenses must be prepared and filed with the court on *Automated Traffic Enforcement System Notice to Appear* (form TR-115), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145), and must comply with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST).

(b) Nontraffic offenses

A notice to appear issued for a nontraffic infraction or misdemeanor offense that is prepared on *Nontraffic Notice to Appear* (form TR-120), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145), and that complies with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST), may be filed with the court and serve as a complaint as provided in Penal Code section 853.9 or 959.1.

(c) Corrections

Corrections to citations previously issued on *Continuation of Notice to Appear* (form TR-106), *Continuation of Citation* (form TR-108), *Automated Traffic Enforcement System Notice to Appear* (form TR-115), *Nontraffic Notice to Appear* (form TR-120), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) must be made on a *Notice of Correction and Proof of Service* (form TR-100).

(d) Electronic citation forms

A law enforcement agency that uses an electronic citation device to issue notice to appear citations on the Judicial Council's *Electronic Traffic/Nontraffic Notice to*

TR-INST, NOTICE TO APPEAR AND RELATED FORMS

Revised Effective June 26, 2015



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue
San Francisco, California 94102-3688

EXHIBIT A

1.040. Electronic Notice to Appear

- a) The electronic Notice to Appear issued on either form TR-135, *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) or form TR-145, *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format), eliminates those citation-processing problems caused by the illegibility of handwritten information. The use of an electronic Notice to Appear also reduces the amount of information that must be entered into law enforcement and court computer systems.
- b) A court is authorized to receive and file a Notice to Appear in an electronic form if all of the following conditions are met:³
 - 1) The information is on a form approved by the Judicial Council.
 - 2) The Notice to Appear is transmitted to the court by a law enforcement agency.
 - 3) The court has the facility to electronically store the information for the statutory period of record retention.
 - 4) The court has the ability to reproduce the Notice to Appear in physical form upon the demand and payment of the reproduction costs.
- c) Requirements for citations issued by an electronic citation device on form TR-135 or form TR-145 that differ from those for preprinted citations are specified below where necessary.

1.050. Notice of Correction and Proof of Service

Form TR-100, *Notice of Correction and Proof of Service*, must be used for any corrections to the original Notice to Appear citation.⁴ (See Appendix A.)

Chapter 2 AUTHORITY TO PRESCRIBE FORMAT

2.010. Judicial Council

- a) The Judicial Council has adopted five forms for the Notice to Appear:
 - 1) Form TR-115, *Automated Traffic Enforcement System Notice to Appear*,⁵ to be used in conjunction with violations of sections 22451, 21453, and 22101 recorded by an automated traffic enforcement system. (See Appendix D.)
 - 2) Form TR-120, *Nontraffic Notice to Appear*,⁶ to be used for violations other than traffic offenses. (See Appendix E.)

³Per Pen. Code, § 959.1.

⁴Per Veh. Code, § 40505.

⁵Per Veh. Code, § 40518.

⁶Per Pen. Code, § 853.9.

- 3) Form TR-130, *Traffic/Nontraffic Notice to Appear*,⁷ to be used for both infraction and misdemeanor offenses. (See Appendix F.)
- 4) Forms TR-135 and TR-145⁸ to be used for both infraction and misdemeanor offenses. (See Appendix G and Appendix H.) A computer-generated paper citation is issued to the defendant at the time of arrest and a copy is filed with the court either electronically when permitted or as a paper copy.
- b) Form TR-106, *Continuation of Notice to Appear*, and form TR-108, *Continuation of Citation*, are intended for use in conjunction with *Nontraffic* and *Traffic/Nontraffic Notice to Appear* forms. (See Appendix B.)
- c) The Judicial Council has not adopted a form for, nor established guidelines governing, the following: (1) parking citations, (2) arrest/booking reports, and (3) court bail courtesy notices.

Chapter 3 REVISION DATES

3.010. Judicial Council

- a) Periodically, the Judicial Council will adopt revisions of Notice to Appear forms. **Law enforcement must use the revised Notice to Appear form by the effective date of the revised form adopted by the Judicial Council.** (See section 6.030 for exception.) Depending on changes in statutory requirements, effective dates are established to allow law enforcement as much time as possible to deplete any existing supplies of the old form, print and disseminate new forms, and, if necessary, develop new procedures and train personnel regarding the revisions.
- b) The council adopted forms TR-135 and TR-145 and revised forms TR-115, TR-120, and TR-130, effective June 26, 2015, with implementation as soon as reasonably possible, but no later than November 15, 2015. The council adopted forms TR-100, TR-106, and TR-108 with an effective date of January 1, 2004.

Chapter 4 FORM SPECIFICATIONS

4.010. Required Copies

The arresting officer must prepare the Notice to Appear form, at a minimum, in triplicate with a copy delivered to the court and the issuing agency for Vehicle Code violations⁹ and in duplicate for all other violations.⁹ The copy of the citation issued to the arrested person must include all of the information on the copy of the citation filed with the court, including any signature for the defendant's promise to appear.¹⁰ Before printing or programming Notice to Appear forms, law enforcement agencies should contact their local court to determine if there are any local requirements for the court's case management system.

⁷Per Veh. Code, §§ 40500(b), 40513(b), 40522, and Pen. Code, § 853.9.

⁸Per Veh. Code, §§ 40500(a) and 40506.

⁹Per Pen. Code, § 853.6.

¹⁰Per Veh. Code, § 40505.

Case Summary

Case Number:	HB3116914	
OC Pay Number:	8743529	
Originating Court:	West	
Defendant:	Shay, Nathan Allen	
Demographics:		
	Sex:	Male
	Eyes:	Brown
	Hair:	Brown
	Height(ft/in) :	6'2"
	Weight (lbs):	190
	Race:	White
	Address:	2000 Pch APT 105 Huntington Beach, CA 92648 USA
Identifiers:		
	Type	ID#
	Driver's License	5000622051787

Names:					
	Last Name	First Name	Middle Name	Type	Date of Birth
	Shay	Nathan	Allen	Real Name	10/13/1980

Vehicles:							
	State	License Plate	Warrant	Year	Make	Model	Color
	CA	7FW647	N	2015	Hyundai	Elantra	Burgundy

Case Status:	
Status:	Closed
Case Stage:	Filed with court
Release Status:	
Warrant:	N
DMV Hold :	N
Charging Document:	Citation
Mandatory Appearance:	Y
Owner's Resp:	N
Amendment #:	0
DA Case #:	-
DR #:	-

Counts:										
	Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date
	1	0	01/13/2016	22350 VC	I	Unsafe speed for prevailing conditions			Dismissed	06/06/2016

Professionals:						
	Role	Badge	Agency	Name	Vacation Start	Vacation End
	Retained Attorney		RETAT	Baylis, R. Allen		
	Law Enforcement Officer	1221	HB	Subia,		
	Law Enforcement Officer	2090	HB	Rockett,		

Heard Hearings:					
	Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
	04/20/2016	Arraignment - PC -	W7	Heard	Waives arraignment today
	04/20/2016	Arraignment - PC -	W7	Heard	waives statutory time for
	05/26/2016	Arraignment - PC -	W7	Heard	
	06/06/2016	Arraignment -	W7	Heard	

Register of Actions:			
Date Action	Seq Nbr	Docket Code	Text
02/02/2016	1	FLDOC	Original Citation filed on 02/02/2016 by Huntington Beach Police Department.
	2	DFADD	Name recorded: Shay, Nathan Allen

EXHIBIT B

	3	FLCNT	INFRACTION charge of 22350 VC filed as count 1. Date of violation: 01/13/2016.
02/09/2016	1	NTSNT	Courtesy Notice sent.
02/15/2016	1	CLVXT	Per IVR/WEB request, citation appearance date has been extended to 04/11/2016.
04/01/2016	1	CLVXT	Per IVR/WEB request, citation appearance date has been extended to 05/11/2016.
04/11/2016	1	CLADDW	Calendar reservation made through online services for 04/20/16 at 01:30 PM in W7 for ARGNPC.
	2	ADTXTW	Defendant has accepted Advisement of Rights.
04/20/2016	1	HHELD	Hearing held on 04/20/2016 at 01:30 PM in Department W7 for Arraignment - PC.
	2	OFJUD	Judicial Officer: Lyle Robertson, Commissioner
	3	OFJA	Clerk: R. Cervantes
	4	OFBAL	Bailiff: A. S. Lee
	5	TRPRT	Proceedings recorded electronically.
	6	APNDC	Defendant not present in Court represented by R. Allen Baylis, Retained Attorney.
	7	WVDFP	Defendant's presence is waived pursuant to Penal Code 977(a).
	8	MOTBY	Motion by Defense to continue the arraignment.
	9	MOTION	Motion granted.
	10	WVTIM	Defendant waives statutory time for Arraignment.
	11	WVRAT	Defendant waives the right to be arraigned today.
	12	CLCON	Arraignment - PC continued to 05/26/2016 at 08:30 AM in Department W7 at request of Defense.
	13	DSROR	Court orders defendant released on own recognizance.
05/26/2016	1	HHELD	Hearing held on 05/26/2016 at 08:30:00 AM in Department W7 for Arraignment - PC.
	2	OFJUD	Judicial Officer: Lyle J. Robertson, Commissioner
	3	OFJA	Clerk: L. Morfin
	4	OFBAL	Bailiff: A. S. Lee
	5	TRPRT	Proceedings recorded electronically.
	6	APNDC	Defendant not present in Court represented by R. Allen Baylis, Retained Attorney.
	7	WVDFP	Defendant's presence is waived.
	8	FITXT	"Demurrer to Complaint and Request for Verified Complaint" filed.
	9	TEXT	Court reviewed "Demurrer to complaint and Request for Verified Complaint" and now rules as follows: Demurrer is sustained with leave to amend.
	10	CLSET	Arraignment set on 06/06/2016 at 08:30 AM in Department W7.
	11	CLTXT	Arraignment is set to check if verified complaint has been filed.
	12	DSROR	Court orders defendant released on own recognizance.
	13	TEXT	Court orders notice to be given to the District Attorney's Office; and Huntington Beach Police Department advising them of this ruling and that a verified complaint is to be filed by 06/06/16.
	14	NTCSL	Clerk's Office directed to send notice by letter.
05/27/2016	1	CPGTO	Copy of Minute Order issued on 05/26/2016 forwarded to Office of The District Attorney and Huntington Beach Police Department.
06/06/2016	1	HHELD	Hearing held on 06/06/2016 at 08:30:00 AM in Department W7 for Arraignment.
	2	OFJUD	Judicial Officer: Lyle J. Robertson, Commissioner
	3	OFJA	Clerk: L. Morfin
	4	OFBAL	Bailiff: A. S. Lee
	5	TRPRT	Proceedings recorded electronically.
	6	APNDC	Defendant not present in Court represented by R. Allen Baylis, Retained Attorney.
	7	TEXT	Demurrer to complaint and Request for Verified Complaint filed 05/26/16.
	8	CDCDM	Count(s) 1 DISMISSED - pursuant to Penal Code 1008 - Defective accusation. Demurrer filed. Defendant discharged.
	9	DMDEL	DMV Request Deleted. DMV interface DD1 request deleted - No violations to report
06/07/2016	1	CSCLS	Case closed.

EXHIBIT B